

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COREY CLARK,

Plaintiff and Respondent,

v.

RADAR ONLINE, LLC,

Defendant and Appellant.

B264085

(Los Angeles County
Super. Ct. No. BC569382)

APPEAL from an order of the Superior Court of Los Angeles County,
Elizabeth Allen White, Judge. Reversed with directions.

Davis Wright Tremaine, Kelli L. Sager and Dan Laidman; Cameron Stracher for
Defendant and Appellant.

The Luti Law Firm and Anthony N. Luti for Plaintiff and Respondent.

INTRODUCTION

Defendant and Appellant Radar Online, LLC (Radar) appeals from the trial court's order denying its special motion to strike brought pursuant to the anti-SLAPP statute, Code of Civil Procedure section 425.16.¹ The trial court found that although the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute applied to Plaintiff Corey Clark's complaint regarding an article published by Radar, Clark nonetheless showed a probability of success on his claims. Radar asserts that the court should have granted its motion because Clark did not show that the article was materially false, among other reasons. We reverse because Radar's conduct was protected by the anti-SLAPP statute and Clark failed to carry his burden of showing a probability of success on the merits of his claims.

FACTS AND PROCEDURAL BACKGROUND

Clark participated in the spring 2003 season of Fox's American Idol (Idol), a national televised singing competition. Prior to competing on Idol, Clark was charged in 2002 with battering his younger sister. The battery charges were later dismissed. In March 2003, after Clark advanced several rounds on Idol, a media outlet reported that Clark had been arrested for the alleged battery against his sister. Hours later, Fox issued a press release stating that Clark had been removed from the Idol competition due to his failure to report the battery arrest to Idol.

1. Radar's Publication About Clark

In December 2013, Clark engaged in negotiations with Radar to provide Radar an exclusive interview regarding his controversial departure from Idol. Clark advised Radar that he had documents disproving allegations against him regarding the battery charges and his alleged failure to disclose the charges to Idol. Radar reviewed the documents provided by Clark, and spent several days interviewing him.

¹ All subsequent statutory references are to the Code of Civil Procedure, unless indicated otherwise.

After two months, Radar did not finalize the deal with Clark regarding the exclusive interview. Clark then provided the exclusive interview to Rumor Fix, another media outlet. Subsequently, Radar published statements about Clark in an article titled, “35 Biggest Idol Controversies.” The online article provided 35 slides discussing controversial Idol events. The seventh slide stated:

“Corey Clark Disqualified After Beating Up Sister: Clark became controversial much later when he alleged an affair with Judge Paula Abdul, but when he competed on season 2, producers had to kick him off the show. After making it to the top nine, Idol bigwigs found out Clark had once been arrested for battery against his 15-year-old sister. The wannabe singer was promptly disqualified for not disclosing his past legal mess to AI, a violation of the rule.”

When Clark learned of the article, he contacted Radar requesting a retraction of the statements and an apology; Radar refused to provide either.

In January 2015, Clark sued Radar for libel per se/defamation and false light/invasion of privacy. Clark alleged that all of Radar’s statements regarding him beating up his sister and the reason for his leaving the Idol competition, as well as Radar’s characterization of Clark’s arrest as a legal mess were false. Clark asserted that Radar published the statements, knowing they were false, and that the statements hurt his reputation.

2. Anti-SLAPP Special Motion to Strike

Radar filed a special motion to strike under the anti-SLAPP statute in March 2015. Radar asserted that (1) Clark cannot demonstrate the material falsity of the statements, (2) the article was privileged as a fair report of public documents, (3) as a public figure, Clark cannot establish Radar acted with actual malice, and (4) Clark’s false light claim must be stricken because it is duplicative of his defamation claim and barred by the First Amendment.

Clark opposed the motion, asserting that his complaint was not frivolous, Radar's conduct was not protected, and the anti-SLAPP statute was inapplicable. In his declaration, Clark stated he "expressly advised [Radar] that [he] had the documents to disprove the allegations related to [his] past, which included the dismissal of the alleged battery charges and the fact that [he] did not fail to disclose the dismissal of the alleged battery charges to *American Idol*." Clark attested that he delivered these documents to Radar before the article was published and that Radar news editor Amber Ryland communicated that she had reviewed the documents. According to Clark, Ryland interviewed him for three days. During that time, Clark told Ryland that (1) the battery charges had been dismissed by the prosecutor, (2) he had disclosed his arrest to an Idol junior producer while competing, who had told him not to worry about it, (3) his mentor Paula Abdul told Clark not to say anything further about the arrest, (4) the Idol producers knew about the 2002 arrest and the dropped charges well before he was disqualified from the competition, (5) Clark's sister has at all times maintained that Clark never hit her and informed People Magazine that he did not hit her, and (6) Clark's mother likewise commented that the arrest incident was a misunderstanding. Clark asserted that:

"The Radar Online article was riddled with falsities that [Radar] knew – based upon their conversations with me and the documents that I provided them – were not true. Specifically the story asserted the following false statements:

- "a. 'Corey Clark disqualified after beating up sister.'
 - "b. 'Producers had to kick him off the show'
 - "c. 'After making it to the top nine, Idol bigwigs found out Clark had once been arrested for battery against his 15 year old [*sic*] sister.'
 - "d. 'The wannabe singer was promptly disqualified for not disclosing his past legal mess to A.I., a violation of the rules.' "
- (Boldface omitted.)

Clark believed that Radar published the article to retaliate against Clark for providing the exclusive interview to Rumor Fix. Clark also made evidentiary objections, which were sustained by the trial court, but we do not discuss them in detail as the objections and evidence at issue are not relevant to our analysis.

3. The Court Denied the Special Motion to Strike

The trial court found that Radar's "article regarding [Clark,] which was published on Defendant's Radar Online website was a writing made in a public forum for the purposes of the anti-SLAPP statutes." The court concluded that Clark's controversial *Idol* departure was an issue of public interest, explaining that "[a]s alleged in the [First Amended Complaint], the reason for Plaintiff's departure from *American Idol*—a purported violation of the show's rules—was of concern to a substantial number of people—the audience for *American Idol*, critics thereof or persons generally interested in Hollywood gossip (those of the same ilk as TMZ fans). There is a high degree of closeness between [Radar]'s statements and the foregoing public interest. Moreover, by having chosen to participate as an *American Idol* contestant and then—a decade later—choosing to grant an interview to an online media outlet, Plaintiff voluntarily injected himself into a public debate which he voluntarily sought to resurrect." The court further explained that celebrity gossip issues and issues regarding domestic violence involving people in the entertainment industry have been held to be entitled to anti-SLAPP protection as being matters of public interest. As such, the burden shifted to Clark to demonstrate a probability of prevailing on his claims.

The court then held that Clark had proven a success on the merits of his libel per se/defamation and false light invasion of privacy claims solely as to the statement: "Corey Clark Disqualified After Beating Up Sister." (Boldface omitted.) The court explained that statement was defamatory because Clark had made a sufficient showing that "although he was *arrested* for battery, he was not convicted, and the battery charge against [Clark] was dismissed. . . . As such, it would appear that *American Idol* disqualified [Clark] for purportedly failing to disclose his arrest to producers—a violation of the show's rules—rather than because he 'beat up' his sister—a crime. Imputing the commission of a crime is defamatory on its face and would constitute libel per se."

The court stated that the defamatory statement “was related directly to the issue as to which Plaintiff would be considered a limited public figure.” In finding evidence of actual malice, the court noted Clark’s declaration showed that Radar subjectively knew that the statement that Clark beat up his sister was false and nonetheless published it. Clark had also “provided a plausible motive for [Radar] publishing the article with anger or hostility toward [Clark], i.e., because [Clark] chose to grant an exclusive interview to a different media outlet called Rumor Fix instead.” The court noted that Clark failed to prove that the other statements in the article were false.

The court rejected Radar’s argument that the article was protected by the fair report privilege, stating that the privilege only applies to a fair and true report in a public journal about a judicial, legislative, or other public proceeding, or a charge or complaint made to a public official. As this article was for entertainment regarding Idol, the court reasoned that the privilege did not apply. Based on the foregoing, the trial court denied the special motion to strike. The court also denied Clark’s request for attorney’s fees. Radar appeals.

DISCUSSION

1. Anti-SLAPP Special Motion to Strike

A SLAPP is “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue.” (§ 425.16, subd. (b)(1).) Pursuant to section 425.16, subdivision (b)(1), causes of action that target certain free speech and petitioning activities are subject to a special motion to strike “unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

Thus, in analyzing an anti-SLAPP motion, courts engage in a two-step process for determining whether a claim should be stricken. “ ‘First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken “in furtherance of the [defendant]’s right

of petition or free speech under the United States or California Constitution in connection with a public issue,” as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.’ ” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 733.) “The trial court’s determination of each step is subject to de novo review on appeal.” (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 186.)

2. The Lawsuit Arose Out of Radar’s Conduct in Furtherance of Its Freedom of Speech

Subdivision (e) of section 425.16 defines an “ ‘act in furtherance of a person’s right of petition or free speech under the United States [Constitution] or California Constitution in connection with a public issue’ to include “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest” (§ 425.16, subd. (e)(3)), or “any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e)(4).)

a. The Radar Website Was Open to the Public or a Public Forum

We conclude (and Clark does not dispute) that Radar’s website, where it published the article at issue, was a public forum. “Web sites accessible to the public . . . are ‘public forums’ for purposes of the anti-SLAPP statute.” (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4.) As the appellate court in *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 895, explained, statements published on a “Web site on the Internet . . . are accessible to anyone who chooses to visit [the] Web site. As a result, [the] statements hardly could be more public. The Internet ‘provides relatively unlimited, low-cost capacity for communication of all kinds. . . . Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.’ [Citation].” Clark’s amended complaint even admits that Radar’s has “a wide circulation and the articles they publish and disseminate

are read by a great number of people in the area in which the articles are circulated and published . . . throughout the world.” Thus, the public forum requirement under section 425.16, subdivision (e) was satisfied.

b. Clark’s Idol Dismissal and Battery Arrest Were Issues of Public Interest

The question whether something is an issue of public interest must be construed broadly. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23.) An issue of public interest is “any issue in which the public is interested. In other words, the issue need not be ‘significant’ to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest.” (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042, italics omitted.) A statement or other conduct is made “ ‘in connection with a public issue or an issue of public interest’ (§ 425.16, subd. (e)(4)) ‘if the statement or conduct concerns a topic of widespread public interest and contributes in some manner to a public discussion of the topic.’ ” (*Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 677.) In *Rivero v. American Federation of State, County, and Municipal Employees, AFL–CIO* (2003) 105 Cal.App.4th 913, 924, the appellate court surveyed anti-SLAPP cases and formulated three categories of public issues: (1) statements “concern[ing] a person or entity in the public eye”; (2) “conduct that could directly affect a large number of people beyond the direct participants”; (3) “or a topic of widespread, public interest.” (See also *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 33.)

The case at bar involves statements concerning a person or entity in the public eye. Clark came into the public eye by voluntarily competing on what he describes in his complaint as “the famous hit series known as *American Idol*.” In his declaration accompanying his opposition to the motion to strike, Clark attested that his “popularity was rapidly rising until *American Idol* producers removed [him] from the show” and that “[t]hroughout the years, several media outlets have taken an interest in [him] with respect to the events surrounding [his] departure from *American Idol*.” Clark also indicated that both his mother and sister were interviewed by People Magazine regarding the battery arrest that led to his Idol departure.

The public has clearly taken an interest in Clark's fall from American Idol stardom and removal from the television show. Such discussion and coverage of Clark's removal from Idol evidences a public interest in the casting of this popular television program, which previous cases have found to be an issue of public interest. (See *Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 143 (*Tamkin*) [public interest in casting and creation of a popular broadcast television show episode is an issue of public interest because the public's interest was "shown by the posting of the casting synopses on various Web sites and the ratings for the episode"].) Such celebrity gossip has been held to be entitled to anti-SLAPP protection as being matters of public interest. (See *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808-810 (*Seelig*) [discussion of a reality show contestant was protected by the anti-SLAPP statute].)

Clark asserts that his Idol dismissal and battery arrest were not issues of public interest because they were only relevant to a limited portion of the public (people who watch American Idol). We note that his own declaration and complaint betray him on this issue, as both indicate the widespread popularity of Idol and his increasing fame for participating in Idol. Cases have also shown that public interest can be established solely by interested television fans. (See *Seelig, supra*, 97 Cal.App.4th 798 [public interest by *Who Wants to Marry a Multimillionaire* watchers]; *Tamkin, supra*, 193 Cal.App.4th 133 [public interest by *CSI* television show fans].)

Clark also argues that because his Idol experience concluded over 10 years ago, there is no ongoing controversy and thus the article fails to satisfy the requirement that the constitutionally protected speech occur in the context of an ongoing controversy, dispute, or discussion. We disagree. Simply by choosing to participate in this popular television singing competition, Clark voluntarily subjected himself to scrutiny over the reasons for his removal from the show. (*Seelig, supra*, 97 Cal.App.4th at p. 808 ["By having chosen to participate as a contestant in the Show [*Who Wants to Marry a Multimillionaire*], plaintiff voluntarily subjected herself to inevitable scrutiny and potential ridicule by the public and the media."].) Although his Idol performances concluded 10 years ago, he *again* sought public attention specifically on the issue of his

arrest and rekindled the discussion of the controversy, in exchange for financial gain. Clark cannot claim there is no ongoing controversy whilst reviving the controversy with media outlets.

As such, we conclude that the trial court properly found that Radar's article was made in a public forum in connection with an issue of public interest, entitling it to anti-SLAPP protection under section 425.16, subdivisions (b) and (e). The burden therefore shifted to Clark to prove a likelihood of success on the merits.

3. Clark Failed to Show a Likelihood of Success on the Merits

a. Clark Never Briefed This Issue and Thus Failed to Meet His Burden

The plaintiff bears the burden to establish “that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) In *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821, the California Supreme Court explained: “In order to establish a probability of prevailing on the claim (§ 425.16, subd. (b)(1)), a plaintiff responding to an anti-SLAPP motion must ‘state[] and substantiate[] a legally sufficient claim.’” [Citations.] Put another way, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’” When assessing the plaintiff's showing, “the court must consider both the legal sufficiency of and evidentiary support for the pleaded claims, and must also examine whether there are any constitutional or nonconstitutional defenses to the pleaded claims and, if so, whether there is evidence to negate any such defenses.” (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108.) “Thus, a plaintiff's burden as to the second prong of the anti-SLAPP test is akin to that of a party opposing a motion for summary judgment.” (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 317.)

Here, Clark failed to make any argument in either the trial court or in his appellate brief regarding his ability to succeed on the merits of his case. Clark never identified the elements of his claims and the corresponding evidence to support each element. Clark solely addressed the first prong of the SLAPP analysis regarding whether Radar's conduct was protected free speech. Clark therefore utterly failed to satisfy his burden to

state and substantiate a legally sufficient claim. On this basis alone, the anti-SLAPP special motion to strike should have been granted.

b. Contrary to the Court's Findings, Radar's Statement Was Not Defamatory

To the extent that the trial court determined Clark could succeed on the merits of his case, we disagree. Defamation involves the intentional publication of a factual statement that is false, unprivileged, and injurious; in written form, defamation is “libel.” (See *Burrill v. Nair* (2013) 217 Cal.App.4th 357, 382, disagreed with on other grounds by *Baral v. Schnitt* (2016) 1 Cal.5th 376, 391.) “When a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action.” (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1385, f n. 13.) Thus, to succeed on both libel and false light invasion of privacy, falsity must be proven. “Because this case involves matters of public interest, [the plaintiff] bears the burden of proving the statements at issue were false.” (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1150; *Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1274.)

The trial court concluded that Clark satisfied this burden, focusing on the first line of the article, which stated: “Corey Clark Disqualified After Beating Up Sister.” (Boldface omitted.) Separating this statement from the remainder of the article, the court found that the phrase was false since Clark was disqualified because he failed to disclose his battery arrest to Idol, not because he beat his sister. The court also parsed out three other statements from the publication and concluded that these were not defamatory because Clark had not shown that these statements were false.

The trial court erred in analyzing the publication in fragments and focusing solely on one phrase. When analyzing whether the publication is defamatory, “[t]he publication in question may not be divided into segments and each portion treated as a separate unit; it must be read as a whole in order to understand its import and the effect that it was calculated to have on the reader, and construed in the light of the whole scope and

apparent object of the writer, considering not only the actual language used, but the sense and meaning that may be fairly presumed to have been conveyed to those who read it. [Citation.] Headlines and captions of an allegedly libelous article are regarded as a part of the article.” (*Selleck v. Globe International, Inc.* (1985) 166 Cal.App.3d 1123, 1131.) Falsity cannot be shown if the statement appears substantially true: “To bar liability, ‘it is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details.” [Citations.] . . . [Citation.] . . . Minor inaccuracies do not amount to falsity so long as “the substance, the gist, the sting, of the libelous charge be justified.” [Citations.] Put another way, the statement is not considered false unless it “would have a different effect on the mind of the reader from that which the pleaded truth would have produced.” [Citations.]’ [Citation.]” (*Vogel v. Felice* (2005) 127 Cal.App.4th 1006, 1021, italics omitted.)

When the single-paragraph publication is read as a whole, it is clear to the reader that Clark was removed from the Idol competition due to his failure to disclose his arrest for allegedly battering his sister in 2002. The body of the article explicitly stated that “producers had to kick [Clark] off the show” when they “found out Clark had once been arrested for battery against his 15-year-old sister.” When the phrase singled out by the trial court is read in context with these sentences, the publication cannot reasonably be interpreted to state that Clark was dismissed from Idol for actually beating his sister. Irrespective of the slight miswording of the initial phrase, the substance of the article is accurate and true.

Furthermore, even if we assumed the article represented that Clark beat up his sister, Clark failed to prove this fact was materially false. Not once in his declaration did Clark deny beating up his sister. Clark solely attested that his sister denied that he beat her up and that his mother described the incident as a misunderstanding. He did not provide a declaration from either his sister or his mother to prove these points. Clark’s evasive and incomplete denial of the battery does not satisfy his burden to prove falsity. Analogously, in *Vogel v. Felice, supra*, 127 Cal.App.4th at pp. 1021-1022, the appellate court concluded that the plaintiff (a candidate for public office) failed to meet his burden

of demonstrating falsity on anti-SLAPP motion. There, in response to allegedly defamatory statement that he was an alcoholic and “ ‘owes Wife and kids thousands,’ ” plaintiff submitted a declaration stating he was not an alcoholic and “ ‘I do not owe my wife and kids thousands.’ ” The declaration left open the possibility that the plaintiff owed less than “thousands” to his wife and children, and did not address whether he had ever abused alcohol or been an alcoholic in the past. In sum, his declaration left “open the possibility” that the accusations were “substantially” if not literally true. (*Id.* at p. 1022.)

Likewise here, Clark’s assertions that his sister has denied being beaten evades the issue of whether Clark actually beat her. The victim of battery could deny the physical abuse for any number of reasons. By relying on his sister’s alleged denial, Clark’s declaration effectively leaves open the possibility that Clark beat his sister. To prove the falsity, Clark simply needed to affirmatively assert that he did not beat his 15-year-old sister; he has failed to do this.²

Based on the foregoing we conclude that Radar successfully proved that its publication was protected by the anti-SLAPP statute, and Clark failed to prove he could succeed on his libel and false light invasion of privacy causes of action. The trial court erred in denying the special motion to strike.

² We note that the documents allegedly showing that Idol knew of Clark’s arrest prior to his participation in the competition were not attached to Clark’s opposition and are not in the record. Thus, Clark’s contentions below that the remainder of the statements in the publication was false is also unsupported by the evidence.

DISPOSITION

The order is reversed with directions to grant the special motion to strike.
Defendant and Appellant Radar Online is awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.*

I concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.